

JUDICIARY & RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2013 Legislative Session

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DOCKET NO. 06-0101-1202
NOTICE OF PROCLAMATION OF RULEMAKING

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROCLAMATION

EFFECTIVE DATE: The effective date of this rule is **November 2, 2012**.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. Section 20-212, Idaho Code, requires the Idaho State Board of Correction to make rules. Pursuant to Section 20-212(1), Idaho Code, rules of the Idaho State Board of Correction are subject to review of the Idaho State Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code, but no other provisions of chapter 52, title 67, Idaho Code, shall apply to the Board, except as otherwise specifically provided by statute. **In accordance with Section 20-212(1) of the Idaho Code, this rule shall become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin.**

PUBLIC HEARING SCHEDULE: Pursuant to Section 20-212(1), Idaho Code, public hearing(s) concerning this rulemaking will not be scheduled.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures, and directives. Board of Correction rule changes are summarized by sections as follows:

013. Department Fee Structure – This is a new section that describes the fees that the IDOC may charge to help defray the cost of services provided to offenders. The fees themselves are not new fees but fees the IDOC has been charging and collecting for a number of years now.

117. Department Visitors – The amendment of this rule is necessary for the purpose of protecting staff and/or IDOC property from harm or theft. The amendment ensures better identification and accountability of IDOC visitors and puts in place restrictions from bringing firearms and other deadly weapons into secured areas of IDOC property.

312. Deceased Offenders – The amendment of this rule is necessary to make the entire section comprehensively reflect operational practices currently being used by the IDOC regarding a deceased offender’s money and property.

510. Searches of Persons and Vehicles Entering Department Facilities – This section is being deleted in its entirety due to being combined with section 511.

511. Access to Department Properties – The amendment of this rule is necessary for the purpose of protecting staff and offenders from harm. The amendment ensures better identification and accountability of IDOC visitors and bans visitors from bringing contraband and controlled substances into IDOC correctional facilities, community work centers, and district probation and parole offices. The amendment of this rule is also necessary to make the entire section comprehensively reflect operational practices currently being used by the IDOC correctional facilities, CWCs, and district probation and parole offices.

FEE SUMMARY: There is no increase in fees imposed with this rulemaking.

FISCAL IMPACT: There is no fiscal impact on general funds for this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because Section 20-212(1) exempts the Idaho State Board of Correction from conducting negotiated rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lorenzo Washington, Policy Coordinator, at (208) 658-2133.

DATED this 31st day of August, 2012.

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THE FOLLOWING IS THE TEXT OF PROCLAMATION NO. 06-0101-1202

013. DEPARTMENT FEE STRUCTURE.

In order to help the Department defray the cost of various services provided to offenders, the Department may charge the following fees. (11-2-12)

01. Presentence Investigation Fee. Pursuant to Section 19-2516, Idaho Code, if a court orders a presentence investigation to be conducted, the court shall order the defendant to pay up to one hundred dollars (\$100) as determined by the Department as repayment for the cost of conducting the presentence investigation and preparing the presentence investigation report. (11-2-12)

02. Cost of Supervision Fee. Pursuant to Section 20-225, Idaho Code, the Department may charge offenders who are on probation or parole supervision a fee up to seventy-five dollars (\$75) per month. Costs of supervision are the direct and indirect costs incurred by the Department to supervise probationers and parolees, including tests to determine drug and alcohol use, books, and written materials to support rehabilitation efforts, and monitoring of physical location through the use of technology. (11-2-12)

03. Interstate Compact Application Fee. Pursuant to Section 20-225A, Idaho Code, the Department may charge any person under state probation or parole supervision who applies for a transfer of supervision to another state an application fee up to one hundred dollars (\$100). (11-2-12)

04. Maintenance/Room and Board Fee. Pursuant to Section 20-242, Idaho Code, the Department may require that prisoners pay an amount to the Board sufficient for the prisoner's board and personal expenses, both inside and outside the jail, facility, or residence, including costs of administering such prisoner's work furlough program, laundry service fee, and travel or van service fee. The Department currently sets these fees in Department standard operating procedure. (11-2-12)

05. Hobby Craft Surcharge. Pursuant to Department standard operating procedure, the Department may charge offenders who participate in facility hobby craft activities a surcharge to offset the cost of hobby craft supplies and items that are used by participating offenders, such as hobby shop tools. The Department currently sets the fee in Department standard operating procedure. (11-2-12)

06. Photo Copying Fee. Pursuant to Department standard operating procedure, the Department may charge offenders a fee for photocopying court documents relating to qualified legal claims or other documents as authorized by the Department. Offenders will not be denied access to courts based on their inability to pay for photocopies related to qualified legal claims. The Department currently sets the fee in Department standard operating procedure. (11-2-12)

07. Medical Co-Pay Fee. Pursuant to Section 20-209, Idaho Code, the Board shall provide for the care, maintenance and employment of all prisoners now or hereinafter committed to its custody. In order to offset the costs associated therewith, the Department may charge offenders a fee for medical services. The IDOC and/or contract medical provider shall not deny an offender access to healthcare services based on the offender's inability to pay. The Department currently sets the fee in Department standard operating procedure. (11-2-12)

0134. -- 103. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

117. ~~CENTRAL OFFICE~~ DEPARTMENT VISITORS.

~~The~~ Board and Department business ~~should~~ shall be conducted in a safe and secure environment.

~~Identification of visitors in the Department central office building is necessary to ensure staff safety and building security. All visitors and visiting staff having business at the Department central office building shall identify themselves to the receptionist upon entering the building.~~
~~(11-5-99)(11-2-12)~~

01. Identification. ~~The identification of all Department visitors is necessary to ensure staff safety and building security. All Department visitors shall identify themselves to Department staff upon entering into Department property. The identification of frequent visitors and visiting employees may be made by visual recognition and/or the request to see a Department-issued identification card or law enforcement/peace officer badge. Other~~ The identification of all other visitors, not inclusive of officials escorted by a member of the Board, director, division chief, deputy division chief, district manager, or facility head, shall be through photo identification and/or law enforcement/peace officer badge.
~~(11-5-99)(11-2-12)~~

02. Visitor Sign-In and Sign-Out. All Department visitors ~~and visiting staff will~~ shall sign-in ~~the visitor's log, located at the receptionist's desk. All visitors and visiting staff will sign-out when departing~~ upon entering into Department property and sign out upon exiting Department property.
~~(11-5-99)(11-2-12)~~

03. Possessing Firearms and Other Deadly or Dangerous Weapons. Without the approval of the Board, director, or division chief, no person shall be allowed to enter into a correctional facility or community work center (CWC) with a firearm or other deadly or dangerous weapon (see Section 511). With the exception of on-duty law enforcement and Department staff who have been authorized by the Board to possess a firearm while on duty, no other persons shall be allowed to enter into restricted areas of a Department central office or district probation and parole office with a firearm or other deadly or dangerous weapon. For the purpose of this subsection only, the following terms and definitions shall apply: (11-2-12)

a. 'Restricted area' shall mean any area Department property in which certain security measures are carried out for the purpose of protecting staff and/or Department property from harm or theft. (11-2-12)

b. 'Possess' shall mean to bring a weapon, firearm, or other deadly or dangerous weapon, or to cause such items to be brought into Department property or Department vehicles. (11-2-12)

c. 'Firearm' shall mean any weapon, whether loaded or unloaded, from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether such firearm is operable or inoperable. (11-2-12)

d. 'Deadly or dangerous weapon' shall mean a weapon, device, instrument, material, or substance that is used for, or is readily capable of, causing death or serious bodily injury. (11-2-12)

(BREAK IN CONTINUITY OF SECTIONS)

312. DECEASED ~~INMATES~~ OFFENDERS.

01. ~~Notice to Coroner and Family~~ Notifications. Upon verification of the death of an ~~inmate incarcerated offender~~, the facility head ~~(or designee)~~ shall notify the ~~county~~ coroner ~~where of the county in which~~ the facility is located and the ~~inmate's offender's~~ family ~~as listed in the case management file in accordance with emergency contact information the offender has on file with the facility.~~ ~~(11-5-99)(11-2-12)~~

02. Autopsy and Inquest. The coroner shall determine if an autopsy should be performed in accordance with state law and the interests of the public. The Department shall seek an autopsy in all cases of violent or sudden and unexpected death. The coroner shall hold an inquest as required by Section 31-2802~~1~~, Idaho Code, unless the autopsy was waived. ~~(11-5-99)(11-2-12)~~

03. Delivery of the Body to a Funeral Home. As soon as possible after the death of the ~~inmate incarcerated offender~~, the facility head ~~(or designee)~~ shall arrange for the body to be delivered to coroner or a funeral home. The deceased ~~inmate's offender's~~ family, if any, shall be told where the body may be claimed and if the family claims the body, the family shall be responsible for all costs of interment. ~~(11-5-99)(11-2-12)~~

04. Body Not Claimed. In cases where the coroner has performed an autopsy and the body has been released but not claimed, or where the body has not been claimed within seventy-two (72) hours after death and a reasonable and good faith effort was made to notify the deceased ~~inmate's offender's~~ family, the facility head ~~(or designee)~~ shall arrange with a funeral home for interment. If there is not sufficient property in the estate of the deceased ~~inmate offender~~ to pay the necessary expenses of interment, the expenses are a legal charge against the county where the facility is located pursuant to Section 31-2802, Idaho Code. The director of the Department may, in his sole discretion, accept financial responsibility for the costs of interment on behalf of the Department. When the Department accepts financial responsibility for the costs of interment, the interment will be by cremation. ~~(11-5-99)(11-2-12)~~

05. Disposition of ~~the~~ Deceased ~~Inmate~~ Offender's Money and Property. ~~The deceased inmate's personal property and assets held by the department shall be applied toward the costs of interment first. Any monies or property claimed by the deceased inmate's legal representative shall not be released without a written agreement signed by the legal representative to pay the costs of interment. After the death of an incarcerated offender, the facility head (or designee) will make a good-faith effort to locate the person or charitable organization the deceased offender designated in emergency contact information to receive his money and property after interment and property mailing decisions have been made.~~ ~~(11-5-99)(11-2-12)~~

a. ~~The remainder of any money or property after deduction of the costs of interment shall be released to the deceased inmate's legal representative. The legal representative shall present written documentation of the representative's powers and authority. In cases where none of the deceased offender's family or friends take financial responsibility for the deceased~~

~~offender's interment, the Department shall first apply the deceased offender's money towards the offender's interment.~~ (H-5-99)(11-2-12)

~~b. If no person claims the money or property of the deceased inmate within thirty (30) days from the date of death, the facility head where the deceased inmate was housed at the time of death shall deliver all money or property to the local public administrator for probate pursuant to Title 14, Chapter 1, Idaho Code. In cases where the person or charitable organization the deceased offender designated to receive his property and the designated person or charitable organization requests that the deceased offender's property be mailed, the Department shall secondly apply the deceased offender's money towards the cost of mailing the deceased offender's property to the person or charitable organization. If no money remains to cover the cost of mailing the deceased offender's property, the person or charitable organization will have to arrange with the facility to pickup the property, or if the person or charitable organization declines to pickup the property, the Department may dispose of the property in accordance with Department standard operating procedure.~~ (H-5-99)(11-2-12)

~~c. Any money remaining after the deduction of interment and property mailing costs shall be released by the Department to the person or charitable organization the deceased offender designated in emergency contact information to receive his money and property.~~ (11-2-12)

~~i. If the Department is unable to locate the person or charitable organization designated to receive the deceased offender's money, the Department will hold the money for up to two (2) fiscal years and then process the money as unclaimed funds. The Department shall submit all unclaimed funds to the Idaho State Treasurer's Office.~~ (11-2-12)

~~ii. If the Department is unable to locate the person or charitable organization designated to receive the deceased offender's property, the Department will hold the property for up to one hundred eighty (180) days and then donate or destroy the property in accordance with Department standard operating procedure.~~ (11-2-12)

06. ~~Inmates Offenders~~ Housed in Non-Department Facilities. If an ~~inmate incarcerated offender~~ in the custody of the Board dies while housed in a non-Department facility, the Department shall pay for costs of disposition of the body, unless other arrangements are stated in an agreement or contract with the non-Department facility or unless the family shall claim the body of the deceased ~~inmate offender~~. (H-5-99)(11-2-12)

(BREAK IN CONTINUITY OF SECTIONS)

504. -- ~~509~~10. (RESERVED)

~~510. SEARCHES OF PERSONS AND VEHICLES ENTERING DEPARTMENT FACILITIES.~~

~~In order to maintain the secure and orderly operation of the facilities, the Department shall control access to all Department facilities. All persons enter upon or in to a Department property or facility at their own risk and will be required to comply with security and control measures.~~

~~(Also see Section 511.)~~

~~(10-5-07)~~

~~**01. Persons Subject to Search.** All persons and vehicles entering a facility or upon Department property are subject to search. (11-5-99)~~

~~**02. Photo Identification Required.** Adults entering a facility or upon Department property are required to possess and present, on demand, photo identification. The Department will establish identification procedures for minor children in standard operating procedures. (Also see Section 604.) (10-5-07)~~

~~**03. Contraband Prohibited.** Any person who brings or attempts to bring any item or article of contraband into a facility or onto Department property will be subject to arrest and prosecution pursuant to Section 18-2510, Idaho Code. (10-5-07)~~

~~**a.** Members of the public bringing contraband on to or in a facility or Department property during a visit, tour or other sanctioned activity will be subject to immediate and permanent cancellation of the visit, tour or other sanctioned activity. (10-5-07)~~

~~**b.** Vendors, contractors, interns, volunteers or employees bringing contraband on to or in a facility, Department property or inmate work site will be subject to immediate termination of services as a vendor, contractor, intern, volunteer or employee. (10-5-07)~~

511. ACCESS TO DEPARTMENT ~~FACILITIES~~ PROPERTIES.

In order to maintain the secure and orderly operation of Department correctional facilities, community work centers (CWCs), and district probation and parole offices, the Department shall control access to these Department properties. Any person entering onto and/or into a correctional facility, CWC, or district probation and parole office property, shall do so at his own risk and will be required to comply with all written and/or verbal security and control measures. The Department shall not allow public access to any ~~Department property or~~ correctional facility, CWC, or district probation and parole office property without approval of the Board, director, division chief, deputy division chief, district manager, or facility head, ~~or designees~~. The Department may consider any person who enters onto ~~Department property~~ and/or into a correctional facility, CWC, or district probation and parole office property without a business purpose or approval to be trespassing and subject to arrest and prosecution pursuant to Idaho Code. ~~(Also see Section 510.)~~ ~~(10-5-07)~~(11-2-12)

01. Access and Egress Control. The Department will establish standard operating procedure to control access to and egress from all Department properties and facilities. (10-5-07)

02. Persons Subject to Search. All persons entering onto ~~Department property~~ and/or into facilities are a correctional facility, CWC, or district probation and parole office property, may be subject to search ~~(see Section 510).~~ ~~(10-5-07)~~(11-2-12)

03. Vehicles Subject to Search. All vehicles entering onto a correctional facility, CWC, or district probation and parole office property may be subject to search. All vehicles entering the secure perimeter of a correctional facility shall be searched upon entering and exiting the facility. While within the secure perimeter of a correctional facility, unattended vehicles must be locked and have keys removed. ~~(11-2-12)~~(11-2-12)

04. Photo Identification Required. All photo identification requirements described in Section 117 shall apply to all persons entering into a Department correctional facility, CWC, or district probation and parole office property. The Department shall establish identification procedures for minor children visiting with offenders in standard operating procedures. (Also see Section 604.) (11-2-12)

05. Contraband Prohibited. The items allowed onto and/or into a correctional facility, CWC, or district probation and parole office property shall be controlled. Unauthorized items are called contraband. Members of the public bringing contraband onto and/or into a correctional facility, CWC, or district probation and parole office property during a visit, tour, or other sanctioned activity shall be subject to immediate and permanent cancellation of the visit, tour, or other sanctioned activity. (11-2-12)

a. Any person who brings or attempts to bring contraband onto and/or into a correctional facility or CWC property shall be subject to arrest and prosecution pursuant to Section 18-2510, Idaho Code. (11-2-12)

b. Any person who brings or attempts to bring controlled substances onto and/or into a district probation and parole office property shall be subject to arrest and prosecution pursuant to Section 37-2732, Idaho Code. (11-2-12)

c. Any person who brings a firearm into restricted areas of a district probation and parole office property shall be subject to Section 117 of these rules. (11-2-12)

06. Termination of Visit, Tour, Sanctioned Activities, and Services. Any member of the public bringing contraband onto and/or into a correctional facility, CWC, or district probation and parole office property during a visit, tour, or other sanctioned activity will be subject to immediate and permanent cancellation of the visit, tour, or other sanctioned activity. Vendors, contractors, interns, volunteers, or employees bringing contraband onto and/or into a correctional facility, CWC, or district probation and parole office property or offender work site may be subject to immediate termination of services as a vendor, contractor, intern, volunteer, or employee. (11-2-12)